IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10486 OF 2004

Totakhan Kokakhan ...Petitioner

Versus

Mohamed Khaliq Khan ...Respondent

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Mr. R.V. Govilkar, counsel for Petitioner

Mr. S.M. Kazi, counsel for Respondent.

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CORAM: B. H. MARLAPALLE, J.

DATED: 29TH MARCH, 2005

P. C.:-

1. Heard Mr. Govilkar, the learned counsel for the petitioner and Mr. Kazi, the learned counsel for the respondent.

2. In R.A.E. Suit No. 1102 of 2003, the petitioner is the defendant and he had received Court summons on 16.7.2003. He engaged an advocate to appear on 5.8.2003 but did not file any written statement. The suit was adjourned to 25.8.2003, 11.9.2003 and so on. On 11.3.2004, the defendant filed an application praying for written statement being taken on record. The said application has been dismissed by the

impugned order dated 7.10.2004.

3. A Division Bench of this Court has held that the period of 90 days to file written statement is liable to be relaxed depending on the facts of each case and if special and exceptional circumstances are made out. The petitioner's application dated 11.3.2004 filed before the trial court stated that the defendant was intermittently hospitalised and he could not attend the court for a long time and instruct the advocate for filing written statement. In fact the advocate had appeared in the Court on 5.8.2003 itself on furnishing the Vakalatnama. The second reason given was in the interest of justice, equity and fair play. This application was filed by the constituted attorney of the defendant i.e. the defendant's son. The trial court in the impugned order noted that the defendant did not make out any case of special or exceptional circumstances in allowing the application. It noted that even after 11.9.2003 the suit was adjourned for filing written statement to 30.9.2003, 21.10.2003, 15.11.2003, 3.12.2003, 6.1.2004 and 21.1.2004. In support of illness/hospitalisation, no medical certificate was placed on record.

4. In the obtaining circumstances, the view taken by the trial court cannot be termed as perverse or

grossly erroneous to call for interference in a writ petition under Article 227 of the Constitution and therefore, there is no case made out to interfere with the impugned order.

5. The writ petition is rejected summarily.